Walgreen Co. and United Food and Commercial Workers, Local 1500. Case 29-CA-28345

August 29, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On February 6, 2008, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in opposition to the Respondent's exceptions, to which the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Walgreen Co., Oceanside, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

- 1. Substitute the following for paragraphs 1(a) through (c).
- "(a) Telling the Union's agents, in the presence of employees, that they may not speak to employees in a public parking lot.
- "(b) Threatening the Union's agents, in the presence of employees, with the summoning of police if they continue to speak with its employees in a public parking lot.
- "(c) Summoning the police, in the presence of employees, to eject the Union's agents from a public parking lot."

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

We shall modify the judge's recommended Order to include the appropriate remedial language for the violations found, and shall substitute a new notice to conform to the language set forth in the Order as modified.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell the agents of the Union, United Food and Commercial Workers, Local 1500, in the presence of our employees, that they may not speak to our employees in a public parking lot.

WE WILL NOT threaten the Union's agents, in the presence of our employees, with the summoning of the police if they continue to speak with our employees in a public parking lot.

WE WILL NOT summon the police, in the presence of our employees, to eject the Union's agents from a public parking lot.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WALGREEN CO.

Michael Berger, Esq., for the General Counsel.

Paul Galligan, Esq. (Seyfarth Shaw LLP), of New York, New York, and Eugene E. Slade, Esq., of Deerfield, Illinois, for the Respondent.

Thomas J. Lilly, Esq. (O'Donnell, Schwartz, Glanstein & Lilly, LLP), of Williston Park, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge and an amended charge filed by United Food and Commercial Workers, Local 1500 (Union), on June 18 and July 3, 2007, respectively, a complaint was issued on September 12, 2007, against Walgreen Co. (Respondent or Employer).

The complaint alleges essentially that on June 12, 2007, the Respondent, by its supervisors, in the public parking lot adjacent to its facility in the presence of its employees (a) told

agents of the Union that they were not allowed to speak with its employees, (b) threatened the Union's agents that they would summon the police if they continued to do so, and (c) summoned the police to eject them from the parking lot. The Respondent's answer denied the material allegations of the complaint and on October 25, 2007, a hearing was held before me in Brooklyn, New York.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a domestic corporation having its principal place of business in Deerfield, Illinois, and a store located at 2859 Long Beach Road, Oceanside, Nassau County, New York, has been engaged in the operation of a chain of retail drugstores. During the past year, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 from retail sales to its customers and during the same period purchased and received goods and supplies valued in excess of \$50,000 at its Oceanside facility directly from suppliers located outside New York State. The Respondent admits and I find that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent also admits and I find that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. The property

The Respondent's large drug store is situated on the southwest corner of a large parcel of land in Oceanside, located within the Town of Hempstead. The streets bordering that corner are Long Beach Road on the west and Davison Avenue on the south. Customers enter and exit the store through the sole door which is located at the southeast corner of the store. The door is located at the end of a concrete walkway which is about five to six feet wide. It is undisputed that the concrete walkway is private property. However, there was no evidence that that walkway was owned by the Respondent or what the Respondent's interest in that property is.

Immediately to the east of the store and the concrete walk-way is a large parking lot. It is undisputed that the lot is public property, being owned by the Town of Hempstead. A Nassau County police booth is located in the lot. The lot's first parking spaces abut the concrete walkway.

An area described as having red bricks is located east of the entry door and between the concrete walkway which is private property and the parking lot. It has been agreed that that red brick area is public property. However, none of the participants in the June 12 incident knew where the Respondent's property line was situated. Only when the police designated where the organizers could stand was an "ad hoc" definition of the property line established.

A public sidewalk runs parallel to Davison Avenue. Between the entrance door of the store and the public sidewalk is a metal railing on Walgreen's property which is parallel to the public sidewalk. The railing serves to prevent customers from walking onto Davison Avenue when leaving the store.

2. The solicitation of employees

a. The union agents' versions

In early June, managers at the store were notified by their district manager that union representatives had been observed at other stores speaking to employees while they were working. The managers were asked to watch for them and when seen, to ask them to leave the store pursuant to its no-solicitation, no-distribution rule:

Rule for Nonemployees: Solicitation or distribution of literature, for any purpose, is prohibited at all times on Company premises.

Rule for Employees: Solicitation or distribution of literature, for any purpose, is not permitted during the employee's working time. Working time includes paid time spent performing job duties but does not include the employee's break times or meal periods.

On June 12, non-employee union organizers Brendan Sexton and Aly Waddy entered the store and spoke to two to four employees for 10 to 20 minutes while they were working. Assistant managers Anwar Ahmed, Travis Anthony, and Randolph "Andy" Prasnauth approached and asked if they could help them. Sexton and Waddy identified themselves as union agents and were told that they could not speak to employees in the store and were asked to leave.

According to the union agents, they left the store and then stood for about 1 to 2 minutes on the concrete walkway about 8 to 9 feet from the store's entrance to assess the situation. Sexton conceded that the area that they stood in for that short period of time was an area that the police later told him was prohibited for solicitation.

The agents then walked into the parking lot where they stood for 10 to 15 minutes at about the first parking spot, clearly within the parking lot. They waited for employees to exit the store so they could speak to them. Both union agents testified that they preferred speaking to employees in the parking lot and away from the store's entrance in order to avoid being seen by the managers.

It is undisputed that the agents spoke to employee Alex in the public parking lot as he collected shopping carts. Sexton stated that they spoke to Alex for about one minute, about 15 to 20 feet from the entrance. Sexton testified that while speaking to Alex, the three managers left the store and yelled to the agents that Alex was working, and according to Sexton, the managers also shouted that they could not speak to the workers. Waddy only testified that the managers said that Alex was "on the clock." The agents walked away from Alex who went inside the store.

The agents then spoke to employee Katherine in about the same area in the parking lot. She was on her way home and was walking to her car. Sexton observed manager Anthony leave the store and walk over to them. Sexton sought to stop

the manager from interrupting their conversation with Katherine and accordingly walked toward Anthony and they conversed on the private property concrete walkway just outside the store. According to Sexton, Anthony told him that they could not speak to the employees. Sexton replied that they were in a public parking lot and he could not interfere with their discussion.

Sexton stated that Manager Prasnauth joined them and told him that they could not speak to employees and must leave. Waddy testified that she and Katherine stood a very short distance, only a couple of parking spots away from where the managers told Sexton that he could not speak to employees. Sexton repeated that he was in a public parking lot and had the right to speak to the workers. Anthony said that he would call the police. Prasnauth said that he did not care about the laws— "just get off the property." Prasnauth pointed to the public sidewalk adjacent to Davison Avenue and told Sexton to go there. According to Sexton, Prasnauth told him that if he did not leave he would "regret it." Sexton asked him if that was a threat, and Prasnauth told him to "take it however you want to take it, just leave." Anthony again said that they would call the police. Sexton gestured to the nearby police booth in the parking lot and told Anthony that he could get the police. Anthony walked to the police booth and Prasnauth walked into the store passing Waddy, telling her that Anthony was getting the police.

Waddy overheard Anthony telling Sexton that he could not speak to employees in the parking lot; that they had to go on the Davison Avenue sidewalk. Shortly after, a police officer drove her cruiser to the front of the store, and Katherine left the area. A police sergeant arrived shortly thereafter in another vehicle and it is undisputed that they told the union agents that they could stand in the parking lot or on the red brick area next to the parking lot but not past that area because they might impede the flow of traffic into the store. The officers also told the union agents that they could not stand on the concrete walkway leading to the store entrance. The officers went inside the store and repeated their instructions to the mangers. It should be noted that on June 12, the union agents did not picket or distribute flyers or leaflets.

Both Sexton and manager Anthony stated that when the officers spoke to the union agents in the parking lot, many employees congregated at the door, not working but looking out and observing the scene where Prasnauth spoke to the union agents and later when three police cars were present. The union agents estimated that the police were on the scene for 20 to 30 minutes.

b. The managers' versions

Anthony and Prasnauth both implied that they recalled the events at issue because a delivery of merchandise was made from the warehouse to the store on that day. However, Anthony testified that warehouse deliveries are made on Fridays. Prasnauth stated that such deliveries take place on Friday or Wednesday. However, June 12, the day at issue, was a Tuesday.

Anthony testified that after being asked to leave the store, the union agents stood for two to three minutes in front of the railing next to the store entrance soliciting employees. Prasnauth

testified that they stood "for a while" in the concrete walkway about five feet in front of the entrance to the store, "blocking the entrance and exit." He did not state that they solicited any workers during that time. The union agents denied blocking the store entrance.

Apparently, the managers did not stop the union agents from engaging in such activity and indeed Prasnauth said that "when it just happened I didn't say anything."

In contrast to the union agents' testimony, Manager Prasnauth testified that the agents first approached Katherine and not Alex. Prasnauth stated that Katherine was on her break in the parking lot, sitting in her car and was spoken to by the union agents. He stated that he "had no problem" with that since she was sitting in her car.

Later, a customer complained that there were no shopping carts in the store. Alex was asked to get the carts and they observed him being approached by a union agent. Prasnauth stated that after he asked Alex to collect the carts, Alex "went out to get the cart and that's when [Sexton] went to Alex in the parking lot, stopped him and they were having a conversation."

Prasnauth observed them talking but said nothing, but then the customer who had requested the cart again complained that no carts were available. Prasnauth then left the store and told Alex to bring the carts in. Sexton yelled and screamed at him for 5 minutes accusing him of intimidating the employees, engaging in illegal behavior, and threatening to have him (Prasnauth) arrested. During that conversation Prasnauth and the union agents stood in the concrete walkway on the Respondent's property immediately outside the store entrance.

Anthony saw Prasnauth leave the store and speak to Sexton. Their conversation took place in the concrete walkway on the Respondent's private property. Anthony left the store to see what was happening. He overheard Prasnauth tell the agents inside and outside the store that they could not speak to the workers on company time but could speak to them on their break or after they are finished work.

Anthony stated that he did not overhear the conversation between the agents and Prasnauth outside the store, was not certain as to what the dispute was about, and had no interest in the topic of their discussion, but was determined to have the incident "end." In accomplishing that goal, he walked directly to the police booth on a "mission" to find out where the agents could stand, stating that at that time he did not know where the Employer's private property ended and public property began. Anthony denied saying anything to the union agents during his walk to the booth, specifically denying that he told the organizers that he was going to the police booth.

Prasnauth testified that it was very rare for a manager to call the police, or for a manager to go to the police booth, and that he had never seen Anthony visit that booth before. Prasnauth, who denied being agitated or upset when speaking to Sexton, also denied threatening to call the police or telling him he had to leave or he would regret it.

Anthony told the officer "I have two Union reps over there. I just want to find out where they should be standing." The officer said that she did not know but would call her supervisor and find out. Anthony returned to the store and on his way back the union agents asked if he was going to call the police.

Anthony said no, he just wanted to see where they were allowed to stand. According to Anthony, the officers told the managers that "they could stand on the red brick—I mean—I'm sorry. They could stand on the concrete area—I'm sorry. They could stand on the red brick, but not on the concrete area, in front, blocking the passageway where the railing is."

Regarding his conversation with the union agents, Anthony denied telling the union agents that they could not speak to employees and could not be on public property. However, Anthony testified that *after* the police arrived, he pointed to the Davison Avenue public sidewalk and told the agents that they had to stand there. This testimony seems odd since Anthony stated that after the police arrived he was in the store and had no further discussions with the union agents. In fact he stated that he and Prasnauth were inside the store when the police arrived and told them that the union agents could stand in the public parking lot or the red brick area. Anthony then saw the officers leave the store and speak to the agents, and he (Anthony) had no further conversation with the agents.

It would make no sense for Anthony to direct the union agents where to stand when they were already given instructions by the police. In addition, he conceded that he had no further communication with the agents after the police arrived. Further, both managers stated that following this incident the agents remained in the public parking lot. Thus, there was no need for Anthony to redirect the agents when they were already standing in a permissible area.

Rather, I find that what happened, consistent with the union agents' credited testimony, was that during their conversation prior to the arrival of the police, Anthony and Prasnauth told Sexton that he could not speak to employees in the parking lot—the organizers had to be on the Davison Avenue sidewalk.

Analysis and Discussion

I. GENERAL FINDINGS AND CREDIBILITY

The complaint alleges that the Respondent, by its supervisors, in the public parking lot adjacent to its facility in the presence of its employees (a) told agents of the Union that they were not allowed to speak with its employees, (b) threatened the Union's agents that they would summon the police if they continued to speak with its employees, and (c) summoned the police to eject them from the parking lot. The complaint's allegations are based on the short exchange between the Respondent's supervisors and the Union's agents on June 12.

The disputed conversation between the managers and the union agents occurred on the concrete driveway which was private property. However, the question is not where that discussion was held, but rather what was said at that time. Thus, if the managers told the agents that they could not speak to employees such a statement would violate the Act regardless of where the participants were standing when the comments were made.

Accordingly, the issue is whether the statements attributed to the managers were made, not where the union agents were standing when the alleged comments were uttered. To the extent that the Respondent argues that the agents were on private property, the concrete walkway next to the store entrance, the parties stipulated that such an area was private property. However, the Respondent has not shown that it had a property interest in that area sufficient to exclude the agents. *Wild Oats Community Markets*, 336 NLRB 170, 180 (2001); *Indio Grocery Outlet*, 323 NLRB 1138, 1141–1142 (1997); *Food for Less*, 318 NLRB 646, 649 (1995); *Bristol Farms*, 311 NLRB 437 (1993).

I credit the testimony of Union Agents Sexton and Waddy. They testified in a consistent, basically corroborative manner concerning the comments by the Respondent's managers. I note that Waddy failed to corroborate Sexton's testimony that when they spoke to Alex the managers told them they could not speak to the workers. Rather, Waddy stated that the supervisors only said that Alex was "on the clock." This minor difference is not fatal to the agents' credibility since the General Counsel does not allege that the managers' statements to them regarding Alex were unlawful.

I cannot credit the testimony of managers Anthony and Prasnauth. They denied telling the agents that they could not speak to the workers. However, in making such a denial, Anthony conceded that he told the agents that they had to stand on the Davison Avenue public sidewalk. This clearly confirms the agents' testimony that they were told that they could not speak to the workers and must leave the property. In response to Sexton's telling the managers that he was on public property, it makes sense that Anthony would have responded, consistent with his demand that they leave the parking lot, that they stand on the public sidewalk instead.

Further, as set forth above, Anthony gave incredible testimony that *after* the police arrived he told the agents to stand on Davison Avenue. As noted above, there was no need for Anthony to tell the union agents to stand there after the police gave them instructions. In addition, Anthony contradicted himself by stating that he gave the agents that direction after the police arrived while also stating that he had no conversations with the organizers after the police arrived. It is therefore clear that Anthony told the agents that they had to stand on Davison Avenue during his confrontation with them. By telling them that they must be on Davison Avenue he was telling them that they could not stand in the public parking lot.

I similarly cannot credit the managers' version that when the agents spoke to Katherine they did not complain since she was on her break. As established by Anthony's testimony that he told the agents that they had to stand on Davison Avenue, it was the managers' consistent position that the agents could not stand in the parking lot. If that was the case, they necessarily would have objected, as the representatives testified, to the organizers speaking to Katherine in the lot regardless of whether she was on her break. Accordingly, I find, as testified by Sexton and Waddy, that they spoke to Alex first and then to Katherine. Their testimony that when the police arrived, Katherine left the lot is consistent with my finding that they spoke to Alex first and then to Katherine since the confrontation ended with the arrival of the police and Katherine's departure.

In addition, Anthony testified inconsistently, first, that he did not overhear Prasnauth's conversation with the agents outside the store, but then stated that he heard Prasnauth tell the agents outside the store that they could not speak to the workers on company time but could speak to them on their break or after they are finished work.

II. THE WARNING THAT THE UNION AGENTS COULD NOT SPEAK TO EMPLOYEES

It should be noted that counsel for the General Counsel does not argue that the managers' statements to the agents that they could not talk to Alex who was on working time, was unlawful. However, he contends that the managers' blanket statement that they could not speak to the workers was unlawful. I agree.

Both Sexton and Waddy credibly testified that while they were speaking to employee Katherine, Managers Anthony and Prasnauth told them that they could not speak to the workers. Although Sexton testified that Prasnauth told him that he could not speak to employees and Waddy stated that Anthony made that comment to Sexton, such testimony is not inconsistent. It may be that both managers made that remark. Indeed, Sexton testified that when he was speaking to Alex, all three managers told the agents that they could not speak to the workers. I do not credit the managers' testimony that they did not tell the union agents that they could not speak to the workers. I reach this conclusion, in part, in reliance on Anthony's admitted testimony that he told the agents that they had to stand on Davison Avenue. By making that statement, Anthony placed a restriction on the agents' communication with the workers—they could not speak to the workers in the public parking lot. It logically follows that he would also have told the representatives that they could not speak to the employees at all.

Accordingly, I find that managers Anthony and Prasnauth told Union Agents Sexton and Waddy in the presence of employee Katherine that they could not speak to employees.

Section 7 of the National Labor Relations Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations" and makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees" in the exercise of their Section 7 rights.

"It is beyond question that an employer's exclusion of union representatives from public property violates Section 8(a)(1) as long as the union representatives are engaged in activity protected by Section 7 of the Act." *Bristol Farms*, 311 NLRB 437, 437 (1993). Here, the union agents were clearly engaged in protected activity by soliciting employees' membership in the Union. "Traditional" union activity engaged in by an employee consists of speaking to a union representative. *Earthgrains Co.*, 338 NLRB 845, 849 (2003).

In Roger D. Hughes Drywall, 344 NLRB 413, 415 (2005), the Board held that union organizers engaged in area standards picketing on public property on behalf of employees whom it represents are engaged in protected activity. That employer's attempt to interfere with such activity by threatening to have the pickets arrested violated Section 8(a)(1) of the Act regardless of whether the employer's actions were witnessed by the employer's workers. Accordingly, although the complaint here alleges that the managers' statements were made to the union agents in the presence of employees, it is not necessary that the statements were heard by the workers. It is sufficient if the union agents were engaged in protected activity, which they were, by soliciting employees' membership in the Union.

In Grass Valley Grocery Outlet, 338 NLRB 877, 880-881 (2003), a store manager approached union agents who were speaking to employees in a shopping center parking lot and told them that they must leave because the lot was private property. As a result of the manager's intervention the conversation broke up and the workers left. The Board found that the agents had a right to be in the lot, had a right to converse privately with the employees, and that the employees were engaged in protected activity. Similarly, here, when the managers told the agents that they must leave the lot, the representatives' conversation with Katherine was interrupted and Katherine shortly left the area. See also Teletech Holdings, Inc., 342 NLRB 924, 930 (2004), where a union agent was distributing literature on public property and was asked to leave by the employer's guards. The Board held that "attempts to thwart employee rights to receive literature from public property adjacent to the workplace constitutes interference with, restraint, and coercion of employees."

Accordingly, I find that by telling the Union's organizers that they could not speak to employees while they were in a public parking lot, the Respondent violated Section 8(a)(1) of the Act.

III. THE THREAT THAT THE POLICE WOULD BE CALLED AND THE SUMMONING OF THE POLICE TO EJECT THE UNION AGENTS FROM THE PUBLIC PARKING LOT

The complaint also alleges that the managers threatened the Union's agents that they would summon the police if they continued to speak with its employees, and that it also summoned the police to eject them from the parking lot.

Regarding the Respondent's threats that they would summon the police, both Sexton and Waddy credibly testified that they were told that Anthony would call the police, and that Anthony then walked to the police booth. The union agents stated that the threat to call the police was accompanied by Prasnauth's demand that they "get off the property" and Anthony's admitted direction that they stand on Davison Avenue. I also find, as testified by Sexton, that Prasnauth told him that if he did not leave he would "regret it." Clearly, that last statement refers to the fact that if the agents did not leave they would regret it because the police would become involved.

Anthony denied saying anything to the union agents during his walk to the police booth, specifically denying that he told the organizers that he was going to the booth or calling the police. Instead, he testified that on his way back from the booth the union agents asked if he was going to call the police. Anthony said no, he just wanted to see where they were allowed to stand.

I credit the testimony of the union agents that Anthony was part of the conversation between them before he walked to the booth. It is incredible that Anthony would state that he did not know the subject of the conversation between Prasnauth and the organizers but went to the police booth to find out where the agents could stand. If he was not aware of the nature of the discussion, which involved a dispute as to whether the agents could properly be in the parking lot, Anthony would not have told the officer "I have two Union reps over there. I just want to find out where they should be standing." Further, Anthony's

testimony that on his return from the police booth the agents asked him if he was going to call the police makes no sense. Clearly, the organizers saw him walk to the police booth. It is illogical that they would have asked him on his return from the booth whether he was going to call the police.

I cannot credit the managers' testimony that they did not tell the agents that Anthony would call the police for the further reason that it seems logical that having told the agents that they had to leave the property and being faced with Sexton's refusal to leave or to stand on Davison Avenue as directed, the managers would have threatened to call the police.

By responding to employees' protected union activity at or near its facility by threatening to call the police, an employer violates the Act. *Winkle Bus Co.*, 347 NLRB 1203, 1219 (2006). The Board held in *Schlegel Oklahoma, Inc.*, 250 NLRB 20, 24 (1980), that an employer violated the Act by threatening a union agent and employee that it would call the police if they did not stop handbilling on public property. See *Gainsville Mfg. Co.*, 271 NLRB 1186, 1188 (1984). See *Lincoln Center for the Performing Arts*, 340 NLRB 1100, 1117 (2003), where a manager approached a union representative who was handbilling on a public sidewalk, ordered him to leave and threatened to "consult" the police if he did not leave. The Board found that such conduct violated the Act.

The complaint also alleges that the Respondent summoned the police to eject the agents from the public parking lot. The Respondent asserts that it did not seek to eject the union agents from the lot, as alleged, but rather Anthony merely sought to determine where the organizers could stand while soliciting employees. The Respondent further argues that it was justified in contacting the police because it had a "reasonable concern" regarding where the representatives could stand while engaging in union activities.

The issue is whether Anthony summoned the police to eject the agents from the lot, as alleged. The evidence is clear that the managers told Sexton and Waddy that they could not speak to employees, demanded that they leave the parking lot and stand on Davison Avenue and threatened to call the police and did contact the police. It was immediately on the heels of these threats and demands that Anthony announced that he was contacting the police and then walked to the police booth. The evidence supports a finding that, to the agents and to employee Katherine who was part of the conversation, the managers' announcement that Anthony was calling the police was part of an effort to eject the organizers from the premises. The union representatives were advised that if they did not leave the lot they would regret it which could only mean that police intervention would be sought to require them to leave.

The Board has held that calling the police to have union organizers removed from public property violates Section 8(a)(1) of the Act. *Corporate Interiors, Inc.*, 340 NLRB 732, 746 (2003); *Mr. Z's Food Mart*, 325 NLRB 871, 884 (1998). *Gainesville,* above. By claiming that union agents are trespassing on private property when in fact they are not, and calling the police to eject them when they distributed literature to employees, a respondent violates the Act. *Barkus Bakery*, 282 NLRB 351, 354 (1986).

In Nations Rent, Inc., 342 NLRB 179, 181 (2004), relied on by the Respondent, the Board found that an employer was justified in contacting the police because of its "reasonable concern" that laws were being violated, specifically that pickets were trespassing on its property, monitoring a police scanner and following employees home. Similarly, in *Great American*, 322 NLRB 17, 20-21 (1996), the Board held than an employer supermarket's summoning police to evict handbillers from the entrance to its parking lot did not violate the Act because the employer was motivated by a reasonable concern for public safety or interference with its legally protected interests. In that case, the Board noted that, although the pickets were on public property, they infringed on the respondent's "private property interest of enabling its customers to have unimpeded entry onto its parking lot." The Board found that the handbilling "caused traffic to be blocked from entering the lot and to be backed up into the street, thus creating a potentially dangerous traffic condition also infringing on [the respondent's] private property rights. Consequently, we find that [the respondent] legitimately attempted under these circumstances to have the handbillers removed from that location."

Those cases are distinguishable. Here, there was no credible evidence that the union agents were trespassing on the Respondent's property. The concrete walkway was private property but, as set forth above, the managers did not know if it was the Employer's property. Further, the agents' solicitations took place in the public parking lot. There was also no evidence that the union agents were interfering with traffic or blocking the store's entrance.

Anthony's admitted concern in going to the police booth was simply to find out where the union agents were permitted to stand and to have the situation "end." There was no evidence that he told the officer that the agents were acting improperly in blocking customer access to the store or trespassing. Although Prasnauth testified that the agents stood "for a while" in the concrete walkway about 5 feet in front of the entrance to the store "blocking the entrance and exit" there was no credible evidence that they, in fact, blocked the store's doorway. Anthony did not corroborate Prasnauth's testimony, and in fact he stated that the union agents stood in that area for only 2 to 3 minutes. In any event, even if they blocked the store entrance they quickly moved away from that entrance and into the parking lot. By the time the police were called they were no longer at the store's entrance. I therefore credit the union agents' denial that they blocked the store entrance.

Accordingly, the Respondent has failed to establish that it was motivated by any reasonable concern when Anthony contacted the police. *Sprain Brook Manor Nursing Home*, 351 NLRB 1190, 1190 (2007). Therefore, I find, as alleged, that the Respondent violated Section 8(a)(1) of the Act by threatening the union agents with the summoning of the police if they continued to speak to employees, and summoned the police to eject them from the public parking lot.

The Respondent argues that any violations found should be considered de minimis as to which a remedial order need not be issued. I disagree. The demand that the union agents not speak to employees, the threat to call the police if they continued to speak with them, and the summoning of the police to eject them from public property clearly had a reasonable tendency to chill the future exercise of Section 7 rights by the employees hearing and witnessing these activities. As a result of the managers' interruption of the conversation with Katherine, she was unable to continue to freely engage in a discussion about unionization, and the organizers were unable to freely solicit her membership at that time. Accordingly, the managers' statements, even if they were limited to a short period of time on 1 day, cannot be viewed as "de minimis." *Golub Corp.*, 338 NLRB 515, 517 (2002).

CONCLUSIONS OF LAW

- 1. By telling the Union's agents in a public parking lot in the presence of employees that they were not allowed to speak with its employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
- 2. By threatening the Union's agents in a public parking lot in the presence of employees with the summoning of the police if they continued to speak with its employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
- 3. By summoning the police in a public parking lot in the presence of employees to eject the union's agents from the public parking lot, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Walgreen Co., Oceanside, New York, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Telling the Union's agents in a public parking lot in the presence of employees that they were not allowed to speak with its employees.
- (b) Threatening the Union's agents in a public parking lot in the presence of employees with the summoning of the police if they continued to speak with its employees.

- (c) Summoning the police in a public parking lot in the presence of employees to eject the union's agents from the public parking lot.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days after service by the Region, post at its facility in Oceanside, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 12, 2007.
- (b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activi-

WE WILL NOT threaten the agents of United Food and Commercial Workers, Local 1500 in a public parking lot in the presence of our employees that they were not allowed to speak with our employees.

WE WILL NOT threaten the Union's agents in a public parking lot in the presence of our employees with the summoning of the police if they continued to speak with our employees.

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

We will not summon the police in a public parking lot in the presence of our employees to eject the Union's agents from the public parking lot.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WALGREEN CO.